



SUPREME COURT OF THE UNITED STATES.

Nos. 394, 397 and 462 to 487.

OCTOBER TERM, 1905.

PERRY F. POWERS, Auditor General, &c.,
Appellant,

VS.

DETROIT, GRAND HAVEN & MILWAUKEE
RAILWAY COMPANY,

MICHIGAN CENTRAL RAILROAD COMPANY,
Appellant,

VS.

PERRY F. POWERS, Auditor General, &c.

26 other cases, numbered from 462 to
487, inclusive.

Now comes the said Michigan Central Railroad Company by O. E. Butterfield, its solicitor, and moves the Court for an order extending the time for argument of the above-entitled cases to 16 hours or such other time as the court may see fit and permitting three counsel to be heard on each side and a fourth counsel on the part of the Railroad Company in the case of Powers vs. Detroit, Grand Haven & Milwaukee Railway Company, and in support of this motion begs leave to state:

That both parties have appealed in the case of Powers vs. the Detroit, Grand Haven & Milwaukee Railway Company;

That all of said cases involve the validity of an act of the Legislature of the State of Michigan, which purports to provide for the taxation of the property of railroad

companies upon an *ad valorem* basis, it being claimed by the Railroad Companies that the act is in violation of the Constitution of the State of Michigan, and also in violation of the Constitution of the United States.

That said cases involve an alleged tax upon property valued upon the assessment roll in question at about \$182,000,000, which is about one-ninth of all the taxable property of the State of Michigan, and that the amount of money which the said Perry F. Powers claims to be due the State of Michigan from the said Railroad Companies for the year 1902 in addition to the sum of about \$1,500,000 already paid is more than \$1,500,000, and that the decision of said cases will determine the liability of said Railroad Companies to pay a substantially similar amount for the years 1903, 1904 and 1905; so that there is really involved in said cases upwards of \$6,000,000, in addition to the sum already paid by said Railroad Companies, to say nothing of large penalties which the Act imposes for non-payment.

That said Act provides that the rate of taxation to be imposed upon the property of the Railroad Companies shall be the average rate of taxation levied upon property in the State other than that included in the Act in question upon which *ad valorem* taxes are assessed for state, county, township, school and municipal purposes, and that in order to fully state the facts upon which the decision must depend, it will be necessary to describe at length the entire taxing system of the State of Michigan, including in such description the system of taxation applicable to railroad property and also the system of taxation applicable to other property, which will necessitate a reference to a large number of statutes of the State of Michigan, and also a number of decisions of the Supreme Court of that State.

That it is claimed by the Railroad Companies that if the Act is held valid, there should be a reduction of some 18 per cent of the taxes imposed; amounting, in all the cases, to more than half a million dollars, because it is alleged that the other property by reference to which the average rate is computed was not in the year in question assessed at its cash value, but at only 82 per cent thereof, while the railroad property was assessed at its cash value, and the record contains over 300 pages of testimony which it is claimed by the Railroad Companies tends to show such under-valuation of such other prop-

erty in the State of Michigan, to all of which it will be necessary to refer upon the argument in order to fully apprise the Court of the facts upon which the decision of this branch of the case must rest.

That the testimony on the part of the Railroad Companies in respect to the under-valuation of such other property is not contradicted, but the Auditor General undertook to meet it, by showing that the railroad property assessed upon the tax-roll in question, is also under-valued to the same or a greater extent. Upon this point, the record contains about 500 pages of testimony and exhibits, to all of which it will be necessary to refer upon the argument in order to fully apprise the Court of the facts upon which the decision of this branch of the case must rest.

That upon the question of valuation of railroad property, the figures in respect to the different railroads vary and it will be necessary upon the argument to call the attention of the Court to the facts in respect to each several railroad company of the 27 involved in the cases.

That the appeal of the said Powers in the case of the Detroit, Grand Haven & Milwaukee Railway Company involves questions entirely different from any of those above referred to. It is claimed by the Railroad Company in that case that the Act in question does not apply to it because of its special charter, which special charter, it is claimed by the Auditor General, has been repealed. The record contains a large amount of testimony bearing upon this point, and upon the argument of the questions involved in this appeal, counsel will be required to refer to a large number of Michigan Statutes and several decisions of the Supreme Court of that State, in order to fully apprise the Court of the facts upon which the decision must rest.

The appeal of the Auditor General in the case of the Detroit, Grand Haven & Milwaukee Railway Company will be argued on the part of the Railway Company by counsel who took no part in the argument of the questions raised in the other cases.

For this reason, it is believed by counsel that it will be impossible to make a fair presentation of the cases in less time than 16 hours, and it is respectfully submitted that 16 hours should be allowed for the argument and that three counsel should be permitted to discuss the

cases on each side, and that in addition thereto at least one counsel should be permitted to argue for the Railroad Company in the appeal of the Auditor General in the case of the Detroit, Grand Haven & Milwaukee Railway Company.

W. E. Bullard

*Of Counsel for all of the Railroad
Companies involved in said cases.*

Business Address:

Room 23, Michigan Central Depot,

Dated this 9th day of December, 1905.

Detroit, Michigan.

Supreme Court of the United States

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Sir:—

Please take notice that on Monday, the eighteenth day of December, 1905, I will apply to the said Court, by motion, to extend the time for argument and permit three counsel to be heard on a side and a fourth counsel to be heard for the Railroad Company in No. 394.

You are herewith served with a copy of said motion.

Dated this 9th day of December, 1905.

.....*W. E. Dutton*.....

*Solicitor for the Michigan Central
Railroad Company, and of Coun-
sel for the Railroad Companies
in the other Cases.*

To the

HON. JOHN E. BIRD,

*Attorney General of the State of Michigan,
Solicitor for said Powers.*

STATE OF MICHIGAN,
COUNTY OF WAYNE, SS.

....., being duly sworn,
deposes and says that he served the foregoing motion and
notice upon John E. Bird, the Attorney General of the
State of Michigan, solicitor for the said Perry F. Powers,
by depositing a copy thereof, enclosed in a sealed enve-
lope, properly addressed to him at his office in the City
of Lansing, Michigan, in the United States postoffice in
the City of Detroit, Michigan, with postage fully pre-
paid thereon, on the day of December,
A. D. 1905.

.....

Subscribed and sworn to before me,

this day of December, 1905.

.....
Notary Public, Wayne Co., Mich.

I hereby accept service of the foregoing motion and no-
tice and consent to the granting of said motion.

Dated, December 12th 1905.

.....
John E. Bird
.....
Solicitor for said Perry F. Powers.